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July 11, 2011

VIA FACSIMILE #215-580-2142

Honorable Edmund V. Ludwig
U. S. District Court for the
Eastern District of Pennsylvania
U. S. Courthouse
601 Market Street, Room 5118
Philadelphia, PA 19107

Re: Valerie Bainbridge v. Acme Markets, Inc.
USDC ED Pa., Civil Action No. 09-4683

Dear Judge Ludwig:

I am writing to respond briefly to the response by Plaintiff regarding her Motion for Sanctions. Defendant contends, for the reasons set forth in my letter dated July 8, 2011, that it is filed prematurely and should be stricken (to be refiled if the case survives summary judgment) or held in abeyance, with no response due by Defendant until after summary judgment is decided.

Plaintiff's Motion for Sanctions seeks only adverse inferences at trial so it is clearly premature. To the extent that Plaintiff now claims that her Motion is relevant to summary judgment, it should have been filed before the deadline for summary judgment, which was April 1, 2011. Indeed, to the extent that Plaintiff believes her Motion for Sanctions is relevant to summary judgment, it should have been filed with the discovery motions which were decided by Magistrate Judge Caracappa. Because a spoliation sanction requires that a party destroy or alter relevant evidence, a finding of relevance is first required and this could have been raised in the extensive discovery proceedings addressing what was relevant to the case Plaintiff did not do so, even though she raised these same spoliation issues in a letter to the Court almost a year ago (dated July 27, 2010) addressing discovery disputes. Thereafter the Court entered an Order dated July 29, 2010 (Docket Entry 23) that "all outstanding discovery issues" must be made in a joint submission to Judge Caracappa.

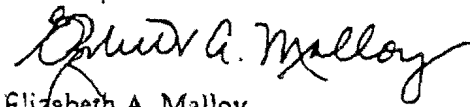
Plaintiff cannot file a Motion well beyond the discovery cutoff and summary judgment deadline and expect the parties and the Court to waste resources while summary

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judgment is pending. Her Motion should be stricken, with leave to file if the case survives summary judgment.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Elizabeth A. Malloy".

Elizabeth A. Malloy

EAM/smb

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cc: Marian Schneider, Esquire

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